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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,032	10/03/2000	Mark B. Lester	1671-0099	5677

7590 01/29/2008  
Maginot, Moore & Beck LLP  
Chase Tower  
111 Monument Circle, Suite 3250  
Indianapolis, IN 46204-5109

EXAMINER
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PRONE, CHRISTOPHER D

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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01/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/678,032	<b>Applicant(s)</b> LESTER ET AL. <span style="float: right;">CT</span>	
	<b>Examiner</b> Christopher D. Prone	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 38-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-44 are rejected under 35 U.S.C. 103 as being unpatentable over USPN 5,879,404 Bateman et al in view of USPN 5,782,928 Ries et al. and further in view of USPN 4,123,806 Amstutz et al.

Bateman discloses an acetabular cup comprising an apex portion 8, a liner 7, and an upper rim, and an outer-surface 82 having a hemispherical shape that is aligned with the surface of an imaginary hemisphere from the bottom of the apex portion to the second plane shown best in figure 4. However Bateman does not disclose that the acetabular cup is about 1 millimeter less than a complete hemisphere or a method for inserting the device.

Ries discloses a method for securing an acetabular cup comprising an apex portion 83, an upper rim, and an outer-surface 82 to an acetabulum. The securing steps include reaming a hemispherically shaped cavity into said acetabulum that is smaller than the largest diameter 68 of the cup in order to form an interference fit.

Amstutz discloses an acetabular cup 18 having an apex and upper rim 58 that is configured to be press-fit into a cavity prepared in the acetabulum. Amstutz discloses a cup 18 that can be precisely hemispherical or 1 or 2 millimeters less than a hemisphere.

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This shape would then render a distance (D) between the "great circle" and the lower plane of the imaginary hemisphere within the applicants claimed range (6: 5-8). Amstutz further A discloses a bearing insert 16 configured to be received with the acetabular cup 18 and is further configured to mate with head portion of the femur 12. The cup 18 and its upper rim 58 lie flush with the surface of the cavity of the acetabulum (7:36-42). The device of Amstutz is in the same field of endeavor teaches the less than hemispherical shape for the purpose of avoiding impingement of the cup.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the less than hemispherical shape taught by Amstutz with the device of Bateman and to insert the implant with the method taught by Ries in order to provide a secure fit and to prevent impingement of the cup.

### ***Response to Arguments***

Applicant's arguments with respect to claims 38-44 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday through Fri 8:30 to 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone  
Examiner  
Art Unit 3738

  
CDP

  
CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
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